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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,581	01/23/2004	Steven N. Mink	82402-10302	3020
23529	7590	10/23/2007		
ADE & COMPANY INC. 2157 Henderson Highway WINNIPEG, MB R2G1P9 CANADA			EXAMINER OLSON, ERIC	
			ART UNIT 1623	PAPER NUMBER
			MAIL DATE 10/23/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/762,581

Applicant(s)

MINK ET AL.

Examiner

Eric S. Olson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 13-16 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 6, 13, 14, 16, 19 and 22-24 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 15, 20 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **Detailed Action**

This office action is a response to applicant's communications submitted August 3, 2007 and August 22, 2007 wherein claims 1, 13, 14, and 16 are amended and new claims 23 and 24 are introduced. This application claims benefit of provisional application 60/442060, filed January 24, 2003.

Claims 1-6, 13-16, and 19-24 are pending in this application.

Claims 1-6, 13-16, and 19-24 as amended are examined on the merits herein.

Applicant's amendment, submitted August 22, 2007, with respect to the objection to instant claims 17-22 for being misnumbered, has been fully considered and found to be persuasive to remove the rejection as the claims have been renumbered as claims 19-24. Therefore the objection is withdrawn.

Applicant's amendment, submitted August 22, 2007, with respect to the rejection of instant claims 1, 5, 6, 13, 14, 16, and 22-24 under 35 USC 112, first paragraph, for lacking enablement for a method comprising administering any lysozyme inhibitor whatsoever, has been fully considered and found to be persuasive to remove the rejection as the claims have been amended to only recite specific inhibitors that are adequately enabled by Applicant's specification. Therefore the rejection is withdrawn.

Applicant's amendment, submitted August 22, 2007, with respect to the rejection of instant claims 1-6 and 13 under 35 USC 112, first paragraph, for lacking enablement

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for a method of preventing sepsis, SIRS, or myocardial depression, has been fully considered and found to be persuasive to remove the rejection as the claims have been amended to no longer recite preventative methods. Therefore the rejection is withdrawn.

The following new grounds of rejection are introduced:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6, 13, 14, 16, 19, and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Esko et al. (US patent 5639734, cited in PTO-892) Esko et al. discloses an anti-inflammatory oligosaccharide containing two sugar units that in one embodiment are N-acetylglucosamine, thereby falling within the limits of the carbohydrates containing at least two N-acetylglucosamine residues described in instant claim 2. (column 2, lines 55-62) Esko et al. also discloses a method of treating an inflammatory disease comprising administering this synthetic oligosaccharide. (column 3, lines 5-9) One inflammatory disease that can be treated in this manner is inflammation due to sepsis. Practicing this method inherently falls within the limits of the claimed invention because even though myocardial dysfunction is not mentioned, the steps practiced in the two methods are the same, administering the same

compound to the same patient population, and will inherently reduce the amount of myocardial dysfunction experienced by these patients. See *Ex parte Novitski* 26 USPQ 2d 1389, 1391 (Bd. Pat. App. & Int. 1993). Note that the claiming of a new use, new function, or unknown property which is inherently present in the prior art does not make the claim patentable. See *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977). See also *Eli Lilly and Co. v. Barr Laboratories Inc.* 251 F.3d 955; 58 USPQ2d 1869-1881 (Fed. Cir. 2001) with regard to inherency as it relates to the claimed invention herein. Therefore Esko et al. anticipates the claimed invention.

Claims 1, 2, 5, 6, 13, 14, 16, 19, and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Hwang et al. (US patent 6653294, cited in PTO-892, first published as US 2001/0036934 on November 1, 2001) Hwang et al. discloses a method of inhibiting cellular NO production by administering chitosan to a subject. (column 1, lines 30-55) This method is useful for treating inflammatory conditions such as septic shock (sepsis). (column 2, lines 31-34) Practicing this method inherently falls within the limits of the claimed invention because even though myocardial dysfunction is not mentioned, the steps practiced in the two methods are the same, administering the same compound to the same patient population, and will inherently reduce the amount of myocardial dysfunction experienced by these patients. See *Ex parte Novitski* 26 USPQ 2d 1389, 1391 (Bd. Pat. App. & Int. 1993). Note that the claiming of a new use, new function, or unknown property which is inherently present in the prior art does not make the claim patentable. See *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433

(CCPA 1977). See also *Eli Lilly and Co. v. Barr Laboratories Inc.* 251 F3c. 955; 58 USPQ2d 1869-1881 (Fed. Cir. 2001) with regard to inherency as it relates to the claimed invention herein. Therefore Hwang et al. anticipates the claimed invention.

### **Conclusion**

Claims 1, 2, 5, 6, 13, 14, 16, 19, and 22-24 are rejected. Claims 3, 4, 15, 20, and 21 are objected to for depending from a rejected base claim but would be allowable if rewritten in independent form incorporating all the limitations of the base claim and any intervening claims.

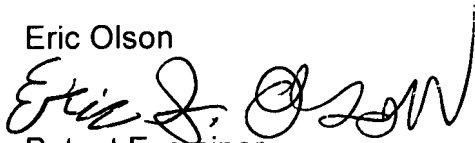
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric S. Olson whose telephone number is 571-272-9051. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on (571)272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric Olson




Patent Examiner

AU 1623

9/28/07

Anna Jiang



10/18/07

Supervisory Patent Examiner

AU 1623